

**Central Administrative Tribunal,
Lucknow Bench, Lucknow**

Original Application No. 161/2006

This the 11th day of February, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Sri A.K. Mishra, Member (A)

Vijay Bahadur Singh Rathore aged about 64 years son of Shri Harihar Bux Singh, resident of Village Kunwarpur Amaraha, P.O. Paharapur (Colonelganj), District-Gonda, formerly employed as Postal Assistant, Gonda in the District. Gonda(Oudh), U.P.

Applicant.

By Advocate Sri R.S. Gupta.

Versus

1. Union of India through the Secretary, Ministry of Communication & I.T. Dett. Of Posts, Dak Bhawan, New Delhi-110001.
2. Supdt. Post Offices, Gonda Division Gonda-271001.
3. Sr. Supdt. Post Offices, Gorakhpur Division Gorakhpur 2013001.

Respondents.

By Advocate Sri S. P. Singh for Sri M.A. Khan.

Order

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made against the penalty of withholding 50% admissible monthly pension for ten years and forfeiture of the entire admissible gratuity amount imposed by the president under Rule 9 of the CCS (Pension) Rules 1972.

2. Brief facts of the case are as follows:-

The applicant was working as Savings Bank Counter Postal Assistant at Balrampur Head Post Office during the period 1.9.1994 to 9.5.96. During this period, a number of incidents happened, on the basis of which, a charge sheet



was issued to him on 8.5.2000 alleging opening of Savings Bank Accounts in the names of fraudulent depositors on three occasions, showing fraudulent deposits and withdrawals and in the process, violating the provisions of Postal Manual as well as CCS Conduct Rules.

3. In the first Article of charge, it was alleged that he gave an application to the Ledger Assistant on 18.9.1995 for opening a joint B Type account for Rs. 20 in the name of fictitious depositors, Sri Radhey Shyam and Smt. Savitri Devi, New Basti, Balrampur whereas deposit slip carried the signature of Asha Srivastava in place of the actual depositors. Subsequently, false deposits of Rs. 50,000/- and Rs. 34,000/- were shown on two different dates and Rs. 45,000/- was allowed to be withdrawn on 8.7.1976 in spite of non-availability of funds in the Savings Bank Account.

4. Article II related to giving an application to the Ledger Assistant for opening a Savings Bank Account on 18.9.1995 in the joint names of Sri Moolchand and Smt. Parwati for Rs. 20/-. The deposit slip was not signed by the depositors, but one Asha Srivastava; fake deposit entry was made for Rs. 74,050/-, out of which, Rs. 30,000/- was withdrawn on 8.8.1996 and another sum of Rs. 30,000 on 9.8.96 in a fraudulent manner.

5. The third Article also related to opening of an account in the fictitious name of Sri Rajendra Singh, Village Baluha, Balrampur. Subsequently, the original index card was substituted by another card bearing the names of Smt. Usha Singh and Sri Rajendra Singh as joint depositors. False deposits were shown to have been made on 13.6.1996 for Rs. 50,000/- and on 15.6.1996 for Rs. 40,000 and subsequently on 19.6.1996 for another Rs. 45,000/-; Rs. 24,000/- was withdrawn fraudulently on two occasions later.

6. The applicant denied the Articles of charges and accordingly, an inquiry as laid down under Rule 14 of the of the CCS (CCA) Rules was conducted. The inquiry officer found that Articles I and III of the charge were not proved and Article II was partly proved. But the disciplinary authority did not agree with

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the findings and sent the inquiry report along with his disagreement note to the applicant to show cause. The applicant submitted his representation dated 8.6.2001 and the disciplinary authority after considering the materials on record held that all the three charges were proved. Since the applicant had retired, he submitted the case for appropriate action under Rule 9 of CCS (Pension) Rules.

7. Thereafter, the president after consideration of the facts and circumstances of the case, the evidence on record came to a tentative conclusion that there was contributory negligence of the charged official which facilitated in the commission of fraud. Further, the charge of negligence of duty and non-observance of the laid down rules and procedure was established which called for imposition of a penalty under Rule 9 of the CCS(Pension) Rules. The matter was referred to Union Public Service Commission (UPSC) for their advice. The UPSC has carefully considered the facts, evidence and inquiry report and observed that charges were proved against the charged official and these constituted grave misconduct. They recommended for withholding of 50% admissible monthly pension of the charged official for ten years and forfeiture of entire amount of admissible gratuity. The president carefully considered the advice of the commission and accepted its advice and imposed the recommended penalty. Hence this application.

8. The order has been challenged on the following grounds:-

(i) that it was not necessary for the depositors to remain present personally at the time of opening of Savings Bank Account and the pay-in-slip could be signed by the messenger. It is seen that This aspect has been examined both by the disciplinary authority as well as UPSC. They have quoted sub Rule 23 (1) of the Post Office Savings Bank Manual Vol. I, which says that if a person desirous of opening an account does not attend in person, he can do so by filling necessary entries in the application form and the pay-in-slip and forwarding those along with the first deposit to the post office. In the

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present case the requisite documents were not signed by the so called depositors.

(ii) that it was not necessary to produce hand to hand receipt book when the allegations are about false entries of deposits. On the other hand, according to the applicant, it is the long book and the list of transactions of a particular day which can show if a particular deposit in a particular account was made and absence of entry of such deposits in these two documents will prove fake entries in the ledger card.

(iii) that lack of security arrangement for proper custody of ledger binders and index cards as the ledger cabinets and index card cabinets were without locking arrangement a fact which was well known to respondents.

(iv) that the responsibility of the applicant in making the fake entries had not been proved by any evidence and as such fixing of responsibility on him was not correct.

(v) that the evidence on record particularly about the statement of witness no. 1 and that there was another person called Swamy Nath Maurya who was functioning as Counter Assistant on 8.7.1996 when a fake withdrawal from the Savings Bank Account No. 627545 was made had not been appreciated.

(vi) when the applicant was at Blarmapur up to 9.5.97 he could not be made responsible for the fraud which took place after initial deposits were made. He says that except for his negligence in not putting his initial below the signature of the depositor on application for withdrawal there was nothing which proved his complicity. Therefore, the findings of the inquiry officer were correct and the disagreement of the disciplinary authority was without any basis.



(vii) that there were other employees involved in the fraudulent transaction and all of them should have been charged sheeted jointly under Rule 18 of CCA(CCS) Rules.


9. Respondents have submitted that the role of the applicant in opening three saving Bank Accounts in the names of fake depositors has been established. The applicant did not keep hand to hand receipt book and managed to keep it away from the notice of the Supervisor and was trying to shift his responsibility to others. As stated earlier, as per the rules the forms and pay-in slips had to be signed by the depositors and not by the agents whose whereabouts were not known. It has been clearly established that laid down rules were not followed by the applicant which resulted in the fraud. It is responsibility of the savings bank accounts assistant to keep the index card in his personal custody and as such he was fully responsible for any bungling which took place in this regard. The affixture of date stamp of 18.9.95 on the fictitious index card could be possible only because of contributory negligence/connivance of the applicant who also had failed to verify the entries relating to deposits and balance in the pass book. They have submitted that the acceptance by the applicant of the fact that SB-3 (Index Card) of the last account was not available went to show his complicity in the matter, particularly, about removal of the index card of the account to avoid detection. The disciplinary authority and the Union Public Service Commission have given sufficient reasons in support of their findings that the charges have been proved against him. There is no case of denial opportunities to the applicant or miscarriage of natural justice.

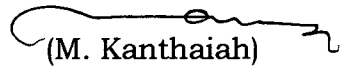
10. It is not the case of the that he has not been given opportunity to defend his case. On the other hand, as seen from the recital of the case, full opportunity had been given to him at each and every stage of the disciplinary proceedings. The matter was also referred to UPSC for their advice. It is also not the case that there is no evidence in order to give a finding about the contributory negligence and violation of rules which have been mentioned the charge sheet. On the basis of material on record, the Disciplinary Authority, the Union Public Service Commission and the President have come to the



conclusion that fictitious accounts were opened at the behest of the applicant who had a role to play in subsequent fraudulent deposits/withdrawals. He was also responsible for the violation of the departmental rules as contained in the Postal Savings Bank Manual.

11. It is not within the scope of judicial review to reassess the evidence. Since violation of natural justice is not being made out in this application, we do not find any scope to interfere with the penalty. In view of the above analysis, we hold that there is no merit in this case which is accordingly dismissed.


(Dr. A. K. Mishra)
Member (A)
11/02/09


(M. Kanthaiah)
Member (J)
11-02-09

v.